ENTERED
AUG 21 2009
TERESA L. DEPPNER, CLERK
U.S. District Court
Southern District of West Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AARON TREADWAY, et al.

Plaintiffs,

vs. **CASE NO. 5:06-0191**

BGS CONSTRUCTION, INC.,

Defendant.

FINAL JUDGMENT ORDER

Plaintiffs have moved pursuant to Fed.R.Civ.P. 60(b)(6) and the terms of the settlement agreement reached by the parties to convert the Order Granting Approval of FLSA Settlement to a Judgment. Rule 60(b)(6) permits a Court to provide relief to any party from a final order for "any reason which justifies relief." The circumstances of this case provide such a reason.

The parties reached a settlement agreement on the eve of trial, after protracted litigation. Because this is a collective action brought pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b), the Court's approval of the settlement agreement was required. The Court approved the settlement by Order of May 13, 2009. [Doc. # 176]. This Order was not, however, a Rule 54 judgment upon which plaintiffs could execute.

As part of the settlement agreement, defendant agreed to attempt to obtain security for the settlement proceeds by March 15, 2009. The parties further agreed that, should defendant be unable to obtain security, then plaintiffs could move the Court to have the settlement converted to a judgment. Plaintiffs' Motion to Approve Settlement Agreement, p. 1 [Doc. # 175].

Under the settlement, the first payment of one-fourth of the settlement amount was to be made within 30 days of the entry of an Order approving the settlement agreement. That Order

was entered on May 13, 2009. [Doc. # 176].

As of the date of filing of plaintiffs' motion, defendant had neither obtained security for the settlement proceeds, nor made the initial payment.

WHEREFORE, it is hereby **ORDERED AND ADJUDGED** that Plaintiffs' Motion to Convert Settlement to Judgment is hereby **GRANTED.** Judgment is hereby entered in favor of plaintiffs and against defendant BGS Construction, Inc., and BGS Construction, Inc., is liable to plaintiffs for:

1. $13,000.00 for the 8 named plaintiffs as compensation for their effort in prosecuting this action, allocated among these plaintiffs as set out in the attached Exhibit A;;
2. $85,500.00 as back wages, allocated among the plaintiffs as set out in the attached Exhibit A;
3. $5,301.00 for the employer's share of the FICA tax on the settlement wages;
4. $1,239.75 for the employer's share of the Medicare tax;
5. $85,500.00 as statutory liquidated damages, allocated among the plaintiffs as set out in the attached Exhibit A;;
6. $90,000.00 for plaintiffs' attorney's fees and costs;
7. $500.00 for the expenses of administering the settlement; and
8. Post judgment interest at the rate set by federal law from June 13, 2009, the date on which the first installment of payments was due.

The total judgment amount is $281,040.75, plus interest.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to remove this matter from the Court's docket and to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: Aug. 21, 2009

THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE

Order submitted by:
Garry G. Geffert
Co-Counsel for Plaintiffs

Treadway v BGS Settlement Calculations

Plaintiff ID#	Plaintiff Name	Consent to Sue Date	Prorated Claims within 2yrs	Prorated Claims - 3rd year @ 66%	Proration for claims over minimum	$500 reimburs	Service Payments	Payment Totals for Plaintiffs
Totals			$ 130,339.46	$ 19,189.54	$ 166,600.00	$ 2,500.00	$ 13,000.00	$ 184,000.00
1	ARBOGAST, RONNEY	10/17/2007	$ 3,793.12	$ -	$ 3,793.12			$ 3,793.12
2	ARTHUR, DOUGLAS E.	10/17/2007	$ 20,069.77	$ 8,680.85	$ 28,744.73			$ 28,744.73
3	ATWELL, JARROD LEE	2/22/2007	$ -	$ 536.23	$ 536.23			$ 536.23
4	BOWIE, BRIAN J.	10/17/2007	$ 3,135.99	$ -	$ 3,135.99			$ 3,135.99
5	BROOKS, RONALD	10/13/2006	$ 2,181.93	$ -	$ 2,181.93		$ 2,000.00	$ 4,181.93
6	CHILDERS, ROBERT C.	10/17/2007	$ 5,832.98	$ -	$ 5,832.98			$ 5,832.98
7	COLLINS, ANDREW M	10/17/2007	$ -	$ 6,855.65	$ 6,855.65			$ 6,855.65
8	DEEJUNG, LARRON K	10/29/2006	$ 4,704.11	$ -	$ 4,704.11		$ 500.00	$ 5,204.11
9	ELLISON, BOBBY RAY	10/17/2007	$ -	$ -		$ 500.00		$ 500.00
10	ENGLAND, RODNEY	10/17/2007	$ -	$ -		$ 500.00		$ 500.00
11	ESSLYANTE, JOSEPH D	10/17/2007	$ 556.98	$ -	$ 556.98			$ 556.98
12	ESSLYANTE, JOSEPH M	10/17/2007	$ 3,284.08	$ -	$ 3,284.08			$ 3,284.08
13	HARRIS, ROBERT C.	10/17/2007	$ -	$ 2,888.51	$ 2,888.51			$ 2,888.51
14	HUGHES, DUSTIN	10/17/2007	$ 12,972.27	$ -	$ 12,972.27			$ 12,972.27
15	JACKSON, CALEB L	10/17/2007	$ -	$ 2,304.32	$ 2,304.32			$ 2,304.32
16	JACKSON, COLBY	10/17/2007	$ -	$ 4,576.26	$ 4,576.26			$ 4,576.26
17	KESSLER, DANIEL	10/17/2007	$ -	$ -		$ 500.00		$ 500.00
18	LANE, THOMAS	10/17/2007	$ -	$ 2,879.43	$ 2,879.43			$ 2,879.43
19	MASON, MICHAEL JOHN	10/17/2007	$ -	$ 1,671.49	$ 1,671.49			$ 1,671.49
20	MCDOWELL, ROBERT J	10/13/2006	$ 1,828.38	$ -	$ 1,828.38		$ 2,000.00	$ 3,828.38
21	MCGINNIS, JEFF	10/17/2007	$ 3,784.76	$ -	$ 3,784.76			$ 3,784.76
22	MCMILLION, BARRY	10/17/2007	$ -	$ 1,224.86	$ 1,224.86			$ 1,224.86
23	MOORE, BERNARD J.	5/11/2006	$ 15,524.98	$ -	$ 15,524.98		$ 2,000.00	$ 17,524.98
24	MULLINS, DONALD HUGH	10/17/2007	$ 2,361.11	$ -	$ 2,361.11			$ 2,361.11
25	MYERS, THEODORE W	10/20/2006	$ 2,678.23	$ -	$ 2,678.23		$ 500.00	$ 3,178.23
26	NEFF, BERNARD	10/17/2007	$ 4,743.28	$ 388.50	$ 5,131.78			$ 5,131.78
27	PETERS, VERNON D	10/17/2007	$ -	$ -		$ 500.00		$ 500.00
28	POSTLETHWAIT, TRAVIS	10/17/2007	$ 1,145.82	$ -	$ 1,145.82			$ 1,145.82
29	PROSKIN, SETH A	10/17/2007	$ -	$ -		$ 500.00		$ 500.00
30	SHEETS, KENNY	10/17/2007	$ -	$ 1,040.07	$ 1,040.07			$ 1,040.07
31	SMITH, DARRELL L.	10/17/2007	$ -	$ 635.45	$ 635.45			$ 635.45
32	SMITH, JAMIE D	3/15/2006	$ 12,667.37	$ -	$ 12,667.37		$ 2,000.00	$ 14,667.37
33	SNYDER, MARK R	10/17/2007	$ -	$ 727.34	$ 727.34			$ 727.34
34	SPEARMEN, REESE I.	10/12/2006	$ 19,736.94	$ 443.75	$ 20,170.69		$ 2,000.00	$ 22,170.69
35	STILES, THOMAS LEIGH	10/17/2007	$ -	$ 3,972.08	$ 3,972.08			$ 3,972.08
36	STOVER, BARRY L	10/17/2007	$ -	$ 1,439.76	$ 1,439.76			$ 1,439.76
37	TREADWAY, AARON M	3/15/2006	$ 4,305.80	$ -	$ 4,305.80			$ 6,305.80
38	YOUNG, SHANE	10/17/2007	$ 4,985.00	$ -	$ 4,985.00			$ 4,985.00

Enter total amount of for Plaintiff Funds per Settlement in box below

$ 184,000.00

PLAINTIFF'S EXHIBIT A